

EXHIBIT 5

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION) Case No.
7) 1:17-MD-2804
8)
9 THIS DOCUMENT RELATES TO) Hon. Dan A.
10 ALL CASES) Polster
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16 Tuesday, May 14, 2019
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24 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
25 CONFIDENTIALITY REVIEW

26 Videotaped Deposition of JAMES E.
27 RAFALSKI, VOLUME 2, held at Weitz &
28 Luxenburg PC, 3011 West Grand Avenue, Suite
29 2150, Detroit, Michigan, commencing at
30 8:25 a.m., on the above date, before
31 Michael E. Miller, Fellow of the Academy of
32 Professional Reporters, Registered Diplomate
33 Reporter, Certified Realtime Reporter and
34 Notary Public.
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1 PROCEEDINGS

2 (May 14, 2019 at 8:25 a.m.)

3 THE VIDEOGRAPHER: We're now on
4 the record. My name is David Lane,
5 videographer for Golkow Litigation
6 Services. Today's date is May 14th,
7 2019. Our time is 8:25 a.m.

8 This deposition is taking place
9 in Detroit, Michigan in the matter of
10 National Prescription Opiate
11 Litigation. Our deponent today is
12 James E. Rafalski. Counsel will be
13 noted on the stenographic record.

14 Our court reporter today is
15 Mike Miller.

16 Mr. Rafalski, I just want to
17 remind you, you're still under oath
18 from yesterday.

19 THE WITNESS: Yes, sir, I
20 understand. Thank you.

21 EXAMINATION

22 BY MS. SWIFT:

23 Q. Good morning, Mr. Rafalski.

24 A. Good morning.

25 Q. We met a moment ago. My name

1 effective controls. Falling under that is
2 suspicious order system.

3 Q. So the list on 37 to 40, these
4 are not requirements under 1301.74(b), the
5 suspicious order monitoring regulation,
6 correct?

7 A. So I'd like to answer that by
8 saying I believe these are all components,
9 which would be necessary to have an effective
10 suspicious monitoring -- a suspicious order
11 monitoring system.

12 Q. And with respect, sir, that's
13 not what I asked you.

14 Are the bullet list components
15 on pages 37 to 40 of your report required
16 under 1301.74(b), the suspicious order
17 monitoring --

18 A. Yes, they are.

19 Q. Okay. All of them?

20 A. Yes.

21 Q. Okay. Great. Thanks.

22 Is it possible to have a
23 compliant suspicious order monitoring system
24 without all of these components?

25 A. Yes, I think it would be

1 possible.

2 Q. But they are all requirements?

3 A. Based on -- depending on the
4 scope of the business that's the customer and
5 based on the scope of activity of the
6 distributor, I would say that some of
7 these -- there could be some of these that
8 would not be necessary. But I'd also say
9 that there may be some that aren't identified
10 on this list. And also, based on the fact
11 that the distribution activity is not static
12 and it changes.

13 Q. So if I'm following you, all of
14 the bullet-listed components on pages 37 to
15 40 are, in fact, required under 1301.74(b),
16 but you could have a compliant suspicious
17 order monitoring system without all of these
18 compliant -- components, and, in fact, there
19 may be other components that are required
20 under 1301.74(b) that are not included in
21 this list.

22 Do I have all that, correct,
23 sir?

24 A. I believe that's correct, yes.

25 Q. Okay.

1 A. I'm not saying this is an
2 exclusive list and there might not be other
3 things that I have not considered or might
4 come up based on the type of business
5 activities that are involved.

6 Q. On page 39, if you would take a
7 look, please. You say, the top bullet, that:
8 A robust and well-documented due diligence
9 program is key.

10 And then it goes on from there
11 and provides components that you say you
12 would like to see in a due diligence
13 compliance program for suspicious orders,
14 correct, sir?

15 A. Yes, ma'am.

16 Q. Is it your opinion that a
17 distributor has to do all of the diligence
18 steps listed here in order to comply with the
19 law?

20 A. Yes, ma'am.

21 Q. All right. I want you to hold
22 on to these pages of your report for a
23 minute, please. And I'm going to hand you a
24 document. This will be Exhibit 19.

25 (Whereupon, Deposition Exhibit

1 A. Yes, there could be.

2 Q. And those other methods that
3 are not identified in your report might be
4 perfectly sufficient for identifying
5 suspicious orders, correct, sir?

6 A. I hope for the sake of
7 diversion they are perfect and they do exist,
8 but yes, that's a possibility.

9 Q. And, in fact, you testified
10 yesterday, I believe, that it's up to the
11 registrant to design a system that makes
12 sense for that registrant's business,
13 correct, sir?

14 A. That's correct.

15 Q. When you were at the DEA, you
16 never advised a registrant to follow any of
17 the five flagging methods that are addressed
18 in your report, correct, sir?

19 MR. FULLER: Same instruction
20 on Touhy.

21 MS. SWIFT: Are you going to
22 follow your counsel's instruction not
23 to answer that question, sir?

24 THE WITNESS: I'd like to think
25 about it first. Is that okay?


1 CERTIFICATE

2 I, MICHAEL E. MILLER, Fellow of
3 the Academy of Professional Reporters,
4 Registered Diplomate Reporter, Certified
5 Realtime Reporter, Certified Court Reporter
6 and Notary Public, do hereby certify that
7 prior to the commencement of the examination,
8 JAMES E. RAFALSKI was duly sworn by me to
9 testify to the truth, the whole truth and
10 nothing but the truth.

11 I DO FURTHER CERTIFY that the
12 foregoing is a verbatim transcript of the
13 testimony as taken stenographically by and
14 before me at the time, place and on the date
15 hereinbefore set forth, to the best of my
16 ability.

17 I DO FURTHER CERTIFY that pursuant
18 to FRCP Rule 30, signature of the witness was
19 not requested by the witness or other party
20 before the conclusion of the deposition.

21 I DO FURTHER CERTIFY that I am
22 neither a relative nor employee nor attorney
23 nor counsel of any of the parties to this
24 action, and that I am neither a relative nor
25 employee of such attorney or counsel, and
26 that I am not financially interested in the
27 action.

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35 My Commission Expires: 7/9/2020

36 Dated: May 15, 2019